

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

)
) **Case No. 12-2012-221354**
)

MATTHEW JOSEPH VUKSINICH, JR., M.D.

) **OAH No. 2015071315**
)

**Physician's and Surgeon's
Certificate No. G43289**

Respondent

DECISION

The attached Decision After Non-Adoption is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on June 17, 2016.

IT IS SO ORDERED: May 18, 2016.

MEDICAL BOARD OF CALIFORNIA



**Howard Krauss, M.D., Chair
Panel B**

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DECISION AFTER NON-ADOPTION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on December 14-16, 2015, in Oakland, California.

Deputy Attorney General Lynne K. Dombrowski represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Stephen D. Schear, Law Offices of Stephen D. Schear, represented respondent Matthew J. Vuksinich, Jr., M.D., who was present.

The record closed and the matter was submitted on December 16, 2015.

The proposed decision of the Administrative Law Judge was submitted to the Medical Board of California ("Board") on January 20, 2016. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on January 27, 2016 issued an Order of Non-adoption. Subsequently, the Board issued a Notice of Hearing For Oral Arguments set for May 5, 2016. Oral and written arguments having been timely received from Complainant and Respondent, and the entire record, including the transcript of said hearing, and written and oral arguments having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. On September 8, 1980, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G43289 to respondent Matthew Joseph

Vuksinich, Jr., M.D. The certificate was in full force and effect during all of the events at issue in this matter. There is no history of discipline against respondent's certificate.

2. On December 18, 2012, Linda K. Whitney, acting in her capacity at that time as the Executive Director of the Board, issued an accusation against respondent. (Kimberly Kirchmeyer is now the Board's Executive Director.) Respondent filed a notice of defense and this hearing followed.

3. The accusation alleges that respondent has been convicted of two misdemeanor offenses involving the consumption of alcoholic beverages, one in Amador County in 2006 and the other in San Mateo County in 2012, and that his convictions are aggravated by other incidents involving the consumption of alcohol. Respondent contends that any issues he had involving the consumption of alcohol were limited to drinking and driving, never his medical practice; that those issues have been addressed and resolved by treatment and a monitoring program over the past three years; and that the accusation should be dismissed.

4. Respondent is a 60-year-old emergency room physician at Seton Coastline Medical Center in Daly City. He graduated from Northwestern University Medical School in 1978, and then did his internship in general surgery at Eastern Virginia Graduate School of Medicine in 1978-1979. He participated in a residency program in general surgery at Stanford University from 1979 to 1981, and at Emanuel Hospital in Portland, Oregon, from 1981 to 1982, but did not complete his residency. Respondent has been an emergency room physician since 1983, and has been at Seton since 2000. Respondent is employed by California Emergency Physicians, a company identified in the documentary evidence as CEP, CEP America, or CEP Med America.

By all accounts, respondent is an excellent emergency room physician who is trustworthy and reliable, and who has never exhibited any signs of alcohol use or impairment on the job. He is always on time for his shifts, he follows through on his professional commitments, he has been selected as the emergency department's chief of quality assurance, and has been asked frequently to serve as interim chief of the department when the chief is absent. Respondent's former chief and worksite monitor, Robert Buscho, M.D., and respondent's colleagues, Don Lee McIntyre, M.D. and Suzan Goodman, M.D., testified to these matters; Timothy F. Isaacs, M.D., submitted a letter to the same effect.

Respondent works in a stand-alone emergency room not attached to a hospital. As such, he works twenty-four hour shifts and is the only emergency room physician on sight during his shift with the nearest affiliated facility being thirty minutes away.

As an emergency room physician, respondent has on many occasions dealt with injuries caused by drunk driving.

2004 arrest

5. In 2004, respondent was arrested at the Oakland International Airport when methamphetamine and a pipe were found in his carry-on luggage. On August 10, 2004, he

entered the Alameda County drug diversion program pursuant to Penal Code section 1000. As a condition of that program respondent was required to attend education classes, group and individual sessions, and 12-Step meetings, and he was required to abstain from the use of alcohol. Respondent completed the program successfully on February 10, 2005. He returned to consuming alcohol after he completed the program.

6. At hearing, respondent denied that the methamphetamine or the pipe belonged to him, but he had no explanation of how they came to be in his luggage.

2006 DUI conviction in Amador County

7. On February 14, 2006, in the Superior Court of the County of Amador, respondent was convicted on his plea of guilty of a violation of Vehicle Code section 23103, subdivision (a) (alcohol-related reckless driving, "wet reckless"), a misdemeanor; this was a negotiated disposition of the original charge that he had violated Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol or drugs). Respondent was placed on summary probation for 36 months on conditions that required him to pay fines and fees, to serve 10 days in jail, with credit for time served, or report immediately to a probation officer in lieu of jail, and to report to the county work program in lieu of the educational component of first offender DUI counseling.

8. The facts and circumstances leading to this conviction are that on July 23, 2005, at about 11:45 p.m., respondent was driving his vehicle near the town of Jackson, when he was pulled over by an Amador County deputy sheriff because one of his headlights was out and his windshield was cracked. The deputy approached respondent's vehicle from the right side and, when respondent rolled down the window, the deputy noticed a strong odor of alcohol. Respondent spoke slowly, his face was flush and his eyes were red and watery. Respondent walked with an unsteady, staggered gait and performed poorly on field sobriety tests. Two preliminary alcohol screenings in the field revealed blood alcohol levels of .084/.084 percent. This arrest occurred less than six months after respondent had completed the drug diversion program in Alameda County.

2009 DUI arrest

9. On June 13, 2009, respondent was arrested by a California Highway Patrol officer for driving under the influence of alcohol. Respondent was driving eastbound on the lower deck of the Bay Bridge at about 4:00 p.m. when the officer observed his vehicle drifting back and forth in its lane. Then respondent's vehicle drifted about three feet into the next lane, and back into its own lane, four times. The officer initiated a stop and respondent pulled over near the toll plaza. The officer approached respondent's vehicle from the driver's side and, when respondent pulled down his window, the officer noted the strong odor of alcoholic beverages. Respondent's eyes were red and watery, and he admitted he had been drinking alcohol. The officer directed respondent to perform field sobriety testing and respondent replied, "I'm going to fail all your tests, just give me the breath test." Despite direction from the officer to blow hard into the test mouthpiece, respondent blew only one small puff of air. Preliminary alcohol screening revealed blood alcohol levels of .068 and .082 percent with "weak capture[s]" of respondent's breath.

Respondent was charged with violations of Vehicle Code section 23152, subdivisions (a) and (b) (driving with a blood alcohol level of 0.08 percent or higher). For reasons not established at hearing, the charges against him were dismissed on June 29, 2009.

2012 DUI conviction in San Mateo County

10. On February 15, 2012, in the Superior Court of the County of San Mateo, respondent was convicted on his plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for three years on conditions that he serve 96 hours in jail, with a recommendation to the sheriff's alternative sentencing bureau; pay fines, fees and assessments; and enroll in and complete an 18-month multiple offender program. From May 18, 2012, to December 19, 2013, the Department of Motor Vehicles restricted respondent's driving privilege to the use of his own vehicle, and required that it be equipped with a functioning ignition interlock device.

11. The facts and circumstances leading to this conviction are that on November 19, 2011, at about 6:30 p.m., respondent was in a convenience store in Daly City when he asked for directions to his destination from a police officer who was inside the store. The officer noticed the odor of alcohol around respondent and noted that his speech was slurred. When respondent got into his vehicle and struck a curb inside the parking lot, the officer got into his patrol car and followed respondent. Respondent was driving in what the officer described as a "serpentine" fashion. The officer pulled respondent over into a parking lot, where he again struck a curb. Respondent failed field sobriety tests, and admitted he had just come from a bar where he had consumed alcohol. His preliminary screening tests revealed blood alcohol concentrations of .124/.13 percent.

Evaluation and treatment following respondent's February 2012 conviction

12. After respondent's 2012 conviction, his employer – CEP – ordered him to be evaluated by the California Physicians Health Program, referred to in the documentary evidence as CPHP or CAPHP. CPHP is a private organization owned by two physicians, David G. Greenberg, M.D., M.P.H., and Michel A. Sucher, M.D.

13. Dr. Greenberg interviewed respondent on June 29, 2012, and reviewed the records that were provided to him. He took a history from respondent, in which respondent disclosed his 2004 arrest for possession of methamphetamine, his 2005 arrest and 2006 conviction for DUI in Amador County, and his 2011 arrest and 2012 conviction for DUI. It appears Dr. Greenberg was not aware of respondent's 2009 arrest on the Bay Bridge: he does not mention it in his report and respondent does not remember whether he disclosed it to Dr. Greenberg. Dr. Greenberg prepared a report dated July 8, 2012, which includes background information about respondent, respondent's personal medical, psychiatric and family history, a medication and substance use history, and Dr. Greenberg's observations of respondent, his concerns, and his recommendations. In his statement of concerns, Dr. Greenberg writes that

[t]his physician has a record of four arrests,¹ which is significant, especially since at least three of them were related to possible substance abuse. Of note is that Dr. Vuksinich adamantly denies ever using methamphetamine and can only provide very feeble suppositions as to how methamphetamine and drug paraphernalia were found in his [carry-on] luggage. . . . It is quite unusual for any physician to have two DUI arrests in a period of four years during their medical careers. These arrests coupled with the physician's current alcohol use history constitute a very significant concern that the doctor may have a substance abuse disorder.

Dr. Greenberg's report concludes:

Dr. Vuksinich is at high risk for having a serious problem with substance abuse. He should have an in depth evaluation for substance abuse disorders at a center that specializes in the evaluation of physicians. These evaluations take approximately 72 hours to perform and will include physical examinations, psychological and psychiatric examinations, along with laboratory tests and testing of cognition, memory, neurological and cognitive functioning. . . . Finally, I believe that Dr. Vuksinich is safe to practice medicine at this time. My concern for the long term is that he may develop progressively severe problems with alcohol or other substances, and that this may eventually impair his practice of medicine. I would recommend that the doctor have the aforementioned evaluation within the next 60 days.

14. The Board conducted an investigatory interview of respondent on July 11, 2012. He acknowledged that he still consumed alcohol, and had done so as recently as three days earlier.

15. In light of Dr. Greenberg's recommendation for an in-depth evaluation, CEP sent respondent to the Promises Treatment Center in Southern California for an intensive multidisciplinary diagnostic evaluation. The evaluation was conducted on September 10-12, 2012. Respondent gave Promises his arrest history and did not disclose his 2009 DUI arrest on the Bay Bridge. Various psychological tests were administered by psychologist Laura Dorin, Ph.D. An evaluation team took a detailed history from respondent and conducted numerous interviews, including interviews of respondent's friends, colleagues and family members. The evaluation team leader was Gregory Skipper, M.D., who is board certified in addiction medicine. Dr. Skipper interviewed respondent, interviewed all the members of the evaluation team, reviewed all of the records that were assembled, and prepared a written report dated September 14, 2012.

¹ The fourth arrest referred to by Dr. Greenberg was a domestic violence arrest in or around 2000. The charges against respondent were dismissed.

Dr. Skipper concluded that respondent's likely diagnosis was alcohol dependence, but he could not tell because of respondent's dishonesty and lack of cooperation. According to Dr. Skipper, respondent presented himself as "an innocent man who has been unfortunately and falsely accused." He felt that respondent was "coy and manipulative"; as an example, Dr. Skipper noted that when confronted with the "obvious fact" that three of his four arrests were for substance-related issues, respondent's response "was to accuse the evaluation team of not being objective and jumping to conclusions." Dr. Skipper felt that a polygraph examination of respondent was necessary to complete the examination, but respondent refused to take it. Dr. Skipper recommended that respondent complete a chemical dependence treatment program oriented toward professionals, and that he not be allowed to practice medicine until he had successfully completed treatment.

16. Dr. Greenberg wrote to the Board on September 28, 2012, after reviewing Dr. Skipper's report and discussing the matter with respondent. Dr. Greenberg wrote:

I am writing on behalf of Dr. Vuksinich. I work as an addiction medicine consultant for CEP Med America. In that role I evaluated Dr. Vuksinich and have continued to follow his care on behalf of his employer. My recommendation for Matt is that he enroll in and successfully complete an intensive outpatient substance abuse program, as his diagnosis is alcohol abuse, and then be monitored for a period of 5 years. After Matt left Promises he decided that he had abused alcohol and that he would benefit from treatment and monitoring. I communicated this to Dr. Skipper and he was relieved that Matt had decided to get help despite the fact that he had refused a polygraph. [¶] I believe that in this case, a diagnosis of alcohol abuse without any signs of impairment on the job in 3 decades warrants an intensive outpatient program and 5 years of monitoring.

17. The Board referred respondent to Gregory Sokolov, M.D., a board certified psychiatrist. Dr. Sokolov examined respondent on September 21, 2012. He took a history from respondent, performed a mental status examination and reviewed the records presented to him by the Board. Respondent told Dr. Sokolov that he had "come [to] terms that [he] cannot drink." In his report dated October 22, 2012, Dr. Sokolov informed the Board that respondent is safe to practice, and that he requires psychotherapy and an intensive outpatient treatment program. Then, Dr. Sokolov wrote, respondent would "need to show consistent adherence to recommended outpatient treatment and sustained abstinence from alcohol, as evidenced by negative toxicology screens in random outpatient monitoring."

18. On November 9, 2012, respondent entered into a two-year "Chemical Abuse Monitoring Agreement" with Dr. Sucher, Dr. Greenberg's partner at CPHP; respondent later extended the agreement. Respondent agreed to abstain from alcohol and all mood altering drugs, and to submit to random biological fluid testing. He was tested periodically through September 2015 and did not return a test that was positive for alcohol or drugs. The testing schedule, however, was not rigorous, with gaps in testing from two weeks to three months.

19. After reviewing the Promises report, Dr. Greenberg reiterated his recommendation for a five-year monitoring program with random testing in a letter to the Attorney General's Office dated January 11, 2013:

I have diagnosed Dr. Vuksinich as having alcohol abuse, and I recommend that he successfully complete an intensive outpatient [program] and that he then participate in an aftercare treatment and monitoring program that utilizes random urine drug and alcohol screening along with random hair or fingernail testing and regular attendance at a professionally facilitated relapse prevention group. In light of the doctor's two DUIs, it would be optimal for him to be in a health care professional's aftercare monitoring program for a period of 5 years rather than the usual 2 year period that is the norm for a single DUI.

20. At Dr. Sucher's suggestion, respondent entered the Merritt Peralta Institute (MPI) "Intensive Outpatient Program for chemical dependency" on October 1, 2013. In a letter dated May 20, 2015, Terry Arnold, the Manager of Assessment & Clinical Services for MPI Treatment Services, writes that respondent successfully completed the program and was discharged on November 7, 2013. Arnold's letter states that MPI Treatment Services follows a 12-Step model of treatment and enforces AA/NA principles of recovery. The letter consists of two paragraphs. It does not contain any information regarding respondent's condition, his treatment or his response to treatment, other than what is stated above.

Respondent states that the MPI program was not helpful to him with respect to his own alcohol use because he knew at the time that he is not an alcoholic. According to respondent, however, the program gave him "huge respect for people who do have substance abuse problems. I just felt so sorry for them and the steps they had to take – just pity and sorrow."

21. Respondent testified that he participated in psychotherapy with psychologist Michael Edelstein, Ph.D., for six to nine months. According to respondent, Dr. Edelstein told him at their first meeting that he did not meet the criteria for an alcohol problem, so they spent their time on other issues. Respondent states that he stopped seeing Dr. Edelstein when he began MPI. No reports or records from Dr. Edelstein were submitted.

22. At hearing, Dr. Sokolov stated that he continues to believe that respondent should be subject to random biological fluid testing for five years, because five years is the benchmark for a continued prognosis of recovery. Dr. Sokolov is concerned about the lapses in the frequency of testing under the CPHP monitoring agreement. Dr. Sokolov continues to believe that respondent needs ongoing, regular psychotherapy, a need that was not met by the one-month outpatient treatment program at MPI.

23. Dr. Sucher testified at hearing. He has not written any full psychological evaluations of respondent. Dr. Sucher stated that he oversaw respondent's monitoring agreement with CPHP, and he has met with respondent three or four times. Dr. Sucher testified that respondent never returned a positive test result. He therefore finds no reason to believe that

respondent has used alcohol or drugs since September 2012. In his opinion, respondent did not meet the diagnostic criteria for alcohol abuse under the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders, Revised (DSM-IV-TR), and he does not meet the diagnostic criteria for alcohol use disorder under the current version of the DSM (DSM-5). In Dr. Sucher's opinion, no further random testing of respondent is necessary. He believes it would be safe for respondent to resume drinking alcohol, and that doing so would not cause him to develop "additional problems." Dr. Sucher thinks that respondent has demonstrated "good insight" into his alcohol use, that he has recognized the need to remain abstinent and that he has done so.

24. Little weight is given to Dr. Sucher's opinion that respondent can safely resume consumption of alcohol. While he was drinking alcohol, respondent repeatedly engaged in misconduct that endangered the public. Contrary to Dr. Sucher's assertion, the matters set forth in Finding 26 demonstrate that respondent's insight into his alcohol abuse is poor, and the matters set forth in Finding 25 and 27 demonstrate that he does not recognize the need to remain abstinent. The opinions of Dr. Greenberg and Dr. Sokolov are more persuasive, that respondent must abstain from the consumption of alcohol, and that he must demonstrate abstinence for five years through a rigorous random testing program.

25. Respondent does not want to be placed on probation, because he does not want what he describes as the "public stigma" that would attach to that status, and because he believes the time commitments associated with probation would make it impossible for him to continue working. Respondent also testified that he "has problems with the ethics and morality" of being placed on a probation, because he does not have an alcohol-related disorder and it is unethical to require treatment for a condition that does not exist.

26. Respondent denies he was impaired by alcohol on any of the three occasions when he was arrested. He denies that he was weaving across lanes of traffic before he was arrested on the Bay Bridge. (He maintains he was suffering from "photophobia" and was momentarily blinded by the sun when he emerged from the tunnel on Yerba Buena Island.) He denies that he struck the curb or drove erratically before he was arrested in Daly City. He admits his eyes were red and watery, but maintains that his eyes are chronically "bloodshot." And he denies that his inability to pass the field sobriety tests administered to him in Amador County, in Alameda County, or in San Mateo County was due to the influence of alcohol. Applicant maintains that he failed the tests because of poor coordination, a lack of athletic ability, innately poor balance and "lateral gaze nystagmus" that he has had since college.

Respondent's testimony on these points is not credible. It is not probable that all of the law enforcement officers lied about their observations. Nor is it probable that respondent's failure to pass field sobriety tests was due to any reason other than his consumption of alcohol. Respondent has been practicing emergency room medicine for over 30 years, a setting that demands coordination, dexterity, balance and acute vision. It is well-known that alcohol consumption affects one's vision, motor skills, and coordination. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771.) Respondent's account of the circumstances of his arrests ignores the obvious and compelling fact that he had been consuming alcohol to a significant extent before each arrest.

Respondent believes that the Promises report was “financially motivated” – in essence, he contends that Promises diagnosed him with an alcohol disorder he does not have so that he would enroll in their residential treatment program. The Promises report is based on the observations of a team of medical professionals, and on objective psychological testing. It is not probable that they conspired to issue a false report. Respondent’s attack on the integrity of Dr. Skipper is not shared by Dr. Sucher, who stated that his company relies on Promises to do its intensive substance abuse evaluations and that Dr. Skipper is a qualified and credible examiner. Respondent’s testing at Promises, which showed “evasiveness and a strong desire to cast himself in a positive light,” is consistent with his presentation in this proceeding. Respondent’s assertion that the Promises report is biased and false is not persuasive.

Respondent’s testimony demonstrates that he lacks insight into his alcohol abuse, and that his testimony on that subject is not credible.

27. Respondent states he has not consumed alcohol since September 2012. His longtime friend, Thomas Donnelly, and his adult son, Michael Vuksinich, testified that they have not seen respondent drink alcohol since that date.

Asked why he decided to abstain from alcohol in September 2012, respondent testified that he felt at some point he was going to be ordered to abstain from alcohol and “since it was not a big deal to [him], [he] thought, ‘Why not now?’” It appears that respondent was anticipating what his employer, CEP, was going to require of him. Shortly thereafter, CEP required respondent to enter the CPHP monitoring program because, it was, in respondent’s words, “getting antsy” about the Board’s investigation. Respondent was required to abstain from alcohol as a condition of entering the CPHP monitoring program. As to his own views on abstaining from alcohol, respondent testified that he does not intend to drink and drive, and he will continue to abstain before treating patients, but he “cannot say [he] would never ever drink.”

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. The board may take disciplinary action against a physician and surgeon who engages in unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (a).) Business and Professions Code section 2239, subdivision (a), provides that “more than one misdemeanor . . . involving the use, consumption or self-administration of any of the substances referred to in this section . . . constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.” Alcohol is one of the substances referred to in section 2239, subdivision (a).

3. Respondent has been convicted of two misdemeanors involving the use and consumption of alcohol. He argues, however, that allegations of unprofessional conduct based on his February 2006 wet reckless conviction are barred by the statute of limitations.

Business and Professions Code section 2230.5, subdivision (a), states that, with exceptions not pertinent here, “any accusation filed against a licensee . . . shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.”

In this case, the accusation was filed on December 18, 2012, which is within the seven-year period following respondent’s wet reckless conviction on February 14, 2006. Respondent argues that the Board “must” have been notified of his 2006 conviction by the district attorney and the clerk of the court; no evidence was presented, however, to show that the board was in fact notified and, if so, when it was notified. Respondent argues that the limitations period accrued with his arrest on July 23, 2005, which occurred more than seven years before the accusation was filed. In this case, however, complainant alleges cause for discipline based on “more than one misdemeanor” – that is, on respondent’s convictions – not on the fact of his use of alcohol on the day he was arrested.

The accusation was filed within 10 months of respondent’s second alcohol-related conviction on February 15, 2012.

The allegations in the accusation concerning respondent’s 2006 wet reckless conviction are not barred by the statute of limitations.

4. Respondent argues that his 2009 DUI arrest is barred by the statute of limitations and that it does not support disciplinary action. That arrest, however, is not alleged as cause for discipline.

5. Citing *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, respondent argues that to satisfy the requirements of due process, he cannot be disciplined unless complainant proves that he poses a threat to public safety.

This contention was rejected in *Griffiths v. Superior Court, supra*, 96 Cal.App.4th 757, and in *Watson*. In *Griffiths*, the court held that section 2239, subdivision (a), establishes a sufficient nexus between alcohol-related misdemeanor convictions and a physician’s competence or fitness to practice medicine:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician’s fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [¶] Driving while under the influence of alcohol also shows an inability or

unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. . . Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the public, tends to undermine public confidence in and respect for the medical profession.

(96 Cal.App.4th at pp. 770-771.) In *Watson*, the court agreed with the reasoning of *Griffiths* that section 2239, subdivision (a), “satisfies the constitutional requirement that a nexus exist between the disciplined conduct and the physician’s fitness and competence to practice medicine without any additional showing that the convictions or the alcohol consumption impaired [the physician’s] practice of medicine.”

To establish cause for discipline under section 2239, subdivision (a), complainant is not required to prove that respondent poses a threat to public safety.

6. Respondent has suffered two convictions involving the use, consumption or self-administration of alcohol. (Findings 7 & 10.) Cause for discipline exists pursuant to Business and Professions Code section 2239, subdivision (a), as that section interrelates with Business and Professions Code section 2234.

7. Cause for discipline having been established, the issue is the extent of discipline that should be imposed. To assist in making this determination, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and “Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees” (Cal. Code Regs., tit. 16, § 1361.) Under the Disciplinary Guidelines, the minimum recommended discipline for a violation of section 2239 is five years’ probation. The Uniform Standards state probationary terms and conditions that “shall be used without deviation in the case of a substance-abusing licensee.” (Cal. Code Regs., tit. 16, § 1361, subd. (b).)

8. Respondent asserts that the accusation against him should be dismissed. He maintains that he does not meet the criteria for an alcohol abuse disorder under the DSM and that, over the past three years, he has done everything that would be required of him by the Board’s probation program. Placing him on probation, respondent contends, would be merely punitive.

9. Respondent’s argument is not persuasive. The steps he has taken to date are not equivalent to the Board’s probation program. The random testing program by CPHP was not sufficiently rigorous, with gaps of time of as much as three months when respondent was not tested. There are no substantive reports from the MPI program, and no reports of any kind from respondent’s psychotherapist, concerning his treatment or his response to treatment. Respondent’s response to these programs has not been reassuring, as his insight into his alcohol-related misconduct remains poor. Respondent’s own assurances that he is rehabilitated cannot be taken at face value, because his credibility on the issue of his substance abuse is also poor.

10. Whatever respondent's psychological diagnosis may be, the evidence establishes he cannot practice with safety to the public unless he abstains from the consumption of alcohol. It is acknowledged that respondent's use of alcohol has not yet resulted in an injury to a patient, but the Board does not have to wait for that to happen to take disciplinary action that is necessary to protect the public. Respondent does not believe he has an alcohol-related condition, he is not committed to abstaining from the consumption of alcohol, and he has not demonstrated convincingly that he will abstain from the consumption of alcohol. The evidence does not justify a departure from the Board's disciplinary guidelines.

Respondent is a substance-abusing licensee. Protection of the public requires that respondent be placed on probation for five years subject to conditions required by the Board's Uniform Standards with the exception of the clinical diagnostic evaluation term. The purpose of the clinical diagnostic evaluation is to determine whether the licensee has a substance abuse problem; whether the licensee is a threat to himself; to provide recommendations for substance abuse treatment; provide recommendations for practice restrictions, or to provide recommendations related to the licensee's rehabilitation and ability to practice safely. Because respondent has already been evaluated and determined to be a substance abusing licensee, has begun engaging in rehabilitative efforts, and has been evaluated by Dr. Sokolov and deemed safe to practice, no further diagnostic evaluation is necessary. Because of his criminal convictions, respondent will be required to enroll in and complete a professionalism course. The Board's standard conditions of probation will also be imposed.

Further, due to his current position in a rural remote emergency room, not affiliated with a hospital, and due to the requirement that he work twenty-four hour shifts, if directed to test on a day when he is already in a twenty-four hour shift, respondent may test at the end of his shift. In all other situations, the testing condition must be adhered to without deviation.

ORDER

Physician's and Surgeon's Certificate Number G43289, issued to respondent Matthew Joseph Vuksinich, Jr., M.D., is revoked. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions.

1. Controlled Substance – Abstain From Use. Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: issuing practitioner's name address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification of cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulated to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

2. Alcohol – Abstain From Use. Respondent shall abstain completely from the use of products or beverages containing alcohol.

If respondent has a confirmed positive biological fluid test for alcohol, respondent shall receive notification from the Board or its designee to immediately cease the practice of medicine. The respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the respondent with a hearing within 30 days of the request, unless the respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probation time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

3. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, respondent's worksite monitor, and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring.

For purposes of this section, “supervisors” shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when respondent has medical staff privileges.

4. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent’s expense, upon request of the Board or its designee. “Biological fluid testing” may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required.

Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by respondent.

Due to his current position in a remote emergency room, not affiliated with a hospital, and due to the requirement that he work twenty-four hour shifts, if directed to test on a day when he is already in a twenty-four hour shift, respondent may test at the end of his twenty-four hour shift. In all other situations, the testing condition must be adhered to as written.

During the first year of probation, respondent shall be subject to 52 to 104 random tests.

During the second year of probation and for the duration of the probationary term, up to five (5) years, respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation

without regard to the type of test administered.

- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the respondent to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If a biological fluid test result indicates respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of a respondent's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, alcohol, or any other substance respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, respondent has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance respondent's rehabilitation.

5. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support

group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. Respondent's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing respondent's name, the group name, the date and location of the meeting, respondent's attendance, and respondent's level of participation and progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

6. Worksite Monitor for Substance-Abusing Licensee

Within thirty (30) calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with respondent in the work environment for a minimum of thirty (30) minutes at least one (1) time per week;

interview other staff in the office regarding respondent's behavior, if requested by the Board or its designee; and review respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of respondent's work attendance; (8) any change in respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

7. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of

Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

- (2) Increase the frequency of biological fluid testing.
- (3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

8. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations, section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

9. Notification

Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

10. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

11. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal

probation, payments, and other orders.

12. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

13. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes: Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or a patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal: Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

14. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

15. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws, and General Probation Requirements.

16. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

17. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

18. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

19. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

This Decision shall become effective on _____.

It is so ORDERED _____.

HOWARD KRAUSS, M.D.
Chair, Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:)	
)	
Matthew Joseph Vuksinich, Jr., M.D.)	
)	Case No.: 12-2012-221354
Physician's & Surgeon's)	
Certificate No: G 43289)	OAH No.: 2015071315
)	
Respondent)	
)	
)	

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Diamond Court Reporters, 1107 2nd Street, Suite 210, Sacramento, CA 95814. The telephone number is (916) 498-9288.

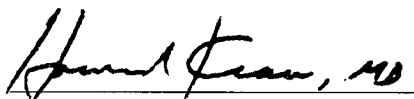
To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
(916) 576-3216
Attention: Kristy Voong

Date: January 27, 2016


Howard Krauss, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MATTHEW J. VUKSINICH, JR., M.D.

Physician's and Surgeon's Certificate
No. G43289

Respondent.

Case No. 12-2012-221354

OAH No. 2015071315

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on December 14-16, 2015, in Oakland, California.

Deputy Attorney General Lynne K. Dombrowski represented complainant Kimberly Kirchmeyer, Executive Director of the Medical Board of California.

Stephen D. Schear, Law Offices of Stephen D. Schear, represented respondent Matthew J. Vuksinich, Jr., M.D., who was present.

The record closed and the matter was submitted on December 16, 2015.

FACTUAL FINDINGS

1. On September 8, 1980, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number G43289 to respondent Matthew Joseph Vuksinich, M.D. The certificate was in full force and effect during all of the events at issue in this matter. There is no history of discipline against respondent's certificate.

2. On December 18, 2012, Linda K. Whitney, acting in her capacity at that time as the Executive Director of the Board, issued an accusation against respondent. (Kimberly Kirchmeyer is now the Board's Executive Director.) Respondent filed a notice of defense and this hearing followed.

3. The accusation alleges that respondent has been convicted of two misdemeanor offenses involving the consumption of alcoholic beverages, one in Amador County in 2006 and the other in San Mateo County in 2012, and that his convictions are aggravated by other incidents involving the consumption of alcohol. Respondent contends that any issues he had involving the consumption of alcohol were limited to drinking and driving, never his medical practice; that those issues have been addressed and resolved by treatment and a monitoring program over the past three years; and that the accusation should be dismissed.

4. Respondent is a 60-year-old emergency room physician at Seton Coastline Medical Center in Daly City. He graduated from Northwestern University Medical School in 1978, and then did his internship in general surgery at Eastern Virginia Graduate School of Medicine in 1978-1979. He participated in a residency program in general surgery at Stanford University from 1979 to 1981, and at Emanuel Hospital in Portland, Oregon, from 1981 to 1982, but did not complete his residency. Respondent has been an emergency room physician since 1983, and has been at Seton since 2000. Respondent is employed by California Emergency Physicians, a company identified in the documentary evidence as CEP, CEP America, or CEP Med America.

By all accounts, respondent is an excellent emergency room physician who is trustworthy and reliable, and who has never exhibited any signs of alcohol use or impairment on the job. He is always on time for his shifts, he follows through on his professional commitments, he has been selected as the emergency department's chief of quality assurance, and has been asked frequently to serve as interim chief of the department when the chief is absent. Respondent's former chief and worksite monitor, Robert Buscho, M.D., and respondent's colleagues, Don Lee McIntyre, M.D. and Suzan Goodman, M.D., testified to these matters; Timothy F. Isaacs, M.D., submitted a letter to the same effect.

As an emergency room physician, respondent has on many occasions dealt with injuries caused by drunk driving.

2004 arrest

5. In 2004, respondent was arrested at the Oakland International Airport when methamphetamine and a pipe were found in his carry-on luggage. On August 10, 2004, he entered the Alameda County drug diversion program pursuant to Penal Code section 1000. As a condition of that program respondent was required to attend education classes, group and individual sessions, and 12-Step meetings, and he was required to abstain from the use of alcohol. Respondent completed the program successfully on February 10, 2005. He returned to consuming alcohol after he completed the program.

6. At hearing, respondent denied that the methamphetamine or the pipe belonged to him, but he had no explanation of how they came to be in his luggage.

2006 DUI conviction in Amador County

7. On February 14, 2006, in the Superior Court of the County of Amador, respondent was convicted on his plea of guilty of a violation of Vehicle Code section 23103, subdivision (a) (alcohol-related reckless driving, "wet reckless"), a misdemeanor; this was a negotiated disposition of the original charge that he had violated Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol or drugs). Respondent was placed on summary probation for 36 months on conditions that required him to pay fines and fees, to serve 10 days in jail, with credit for time served, or report immediately to a probation officer in lieu of jail, and to report to the county work program in lieu of the educational component of first offender DUI counseling.

8. The facts and circumstances leading to this conviction are that on July 23, 2005, at about 11:45 p.m., respondent was driving his vehicle near the town of Jackson, when he was pulled over by an Amador County deputy sheriff because one of his headlights was out and his windshield was cracked. The deputy approached respondent's vehicle from the right side and, when respondent rolled down the window, the deputy noticed a strong odor of alcohol. Respondent spoke slowly, his face was flush and his eyes were red and watery. Respondent walked with an unsteady, staggered gait and performed poorly on field sobriety tests. Two preliminary alcohol screenings in the field revealed blood alcohol levels of .084/.084 percent. This arrest occurred less than six months after respondent had completed the drug diversion program in Alameda County.

2009 DUI arrest

9. On June 13, 2009, respondent was arrested by a California Highway Patrol officer for driving under the influence of alcohol. Respondent was driving eastbound on the lower deck of the Bay Bridge at about 4:00 p.m. when the officer observed his vehicle drifting back and forth in its lane. Then respondent's vehicle drifted about three feet into the next lane, and back into its own lane, four times. The officer initiated a stop and respondent pulled over near the toll plaza. The officer approached respondent's vehicle from the driver's side and, when respondent pulled down his window, the officer noted the strong odor of alcoholic beverages. Respondent's eyes were red and watery, and he admitted he had been drinking alcohol. The officer directed respondent to perform field sobriety testing and respondent replied, "I'm going to fail all your tests, just give me the breath test." Despite direction from the officer to blow hard into the test mouthpiece, respondent blew only one small puff of air. Preliminary alcohol screening revealed blood alcohol levels of .068 and .082 percent with "weak capture[s]" of respondent's breath. Respondent was charged with violations of Vehicle Code section 23152, subdivisions (a) and (b) (driving with a blood alcohol level of 0.08 percent or higher). For reasons not established at hearing, the charges against him were dismissed on June 29, 2009.

2012 DUI conviction in San Mateo County

10. On February 15, 2012, in the Superior Court of the County of San Mateo, respondent was convicted on his plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. Imposition of sentence was suspended and respondent was placed on court probation for three years on conditions that he serve 96 hours in jail, with a recommendation to the sheriff's alternative sentencing bureau; pay fines, fees and assessments; and enroll in and complete an 18-month multiple offender program. From May 18, 2012, to December 19, 2013, the Department of Motor Vehicles restricted respondent's driving privilege to the use of his own vehicle, and required that it be equipped with a functioning ignition interlock device.

11. The facts and circumstances leading to this conviction are that on November 19, 2011, at about 6:30 p.m., respondent was in a convenience store in Daly City when he asked for directions to his destination from a police officer who was inside the store. The officer noticed the odor of alcohol around respondent and noted that his speech was slurred. When respondent got into his vehicle and struck a curb inside the parking lot, the officer got into his patrol car and followed respondent. Respondent was driving in what the officer described as a "serpentine" fashion. The officer pulled respondent over into a parking lot, where he again struck a curb. Respondent failed field sobriety tests, and admitted he had just come from a bar where he had consumed alcohol. His preliminary screening tests revealed blood alcohol concentrations of .124/.13 percent.

Evaluation and treatment following respondent's February 2012 conviction

12. After respondent's 2012 conviction, his employer – CEP – ordered him to be evaluated by the California Physicians Health Program, referred to in the documentary evidence as CPHP or CAPHP. CPHP is a private organization owned by two physicians, David G. Greenberg, M.D., M.P.H., and Michel A. Sucher, M.D.

13. Dr. Greenberg interviewed respondent on June 29, 2012, and reviewed the records that were provided to him. He took a history from respondent, in which respondent disclosed his 2004 arrest for possession of methamphetamine, his 2005 arrest and 2006 conviction for DUI in Amador County, and his 2011 arrest and 2012 conviction for DUI. It appears Dr. Greenberg was not aware of respondent's 2009 arrest on the Bay Bridge: he does not mention it in his report and respondent does not remember whether he disclosed it to Dr. Greenberg. Dr. Greenberg prepared a report dated July 8, 2012, which includes background information about respondent, respondent's personal medical, psychiatric and family history, a medication and substance use history, and Dr. Greenberg's observations of respondent, his concerns, and his recommendations. In his statement of concerns, Dr. Greenberg writes that

[t]his physician has a record of four arrests,^[1] which is significant, especially since at least three of them were related to possible substance abuse. Of note is that Dr. Vuksinich adamantly denies ever using methamphetamine and can only provide very feeble suppositions as to how methamphetamine and drug paraphernalia were found in his [carry-on] luggage. . . . It is quite unusual for any physician to have two DUI arrests in a period of four years during their medical careers. These arrests coupled with the physician's current alcohol use history constitute a very significant concern that the doctor may have a substance abuse disorder.

Dr. Greenberg's report concludes:

Dr. Vuksinich is at high risk for having a serious problem with substance abuse. He should have an in depth evaluation for substance abuse disorders at a center that specializes in the evaluation of physicians. These evaluations take approximately 72 hours to perform and will include physical examinations, psychological and psychiatric examinations, along with laboratory tests and testing of cognition, memory, neurological and cognitive functioning. . . . Finally, I believe that Dr. Vuksinich is safe to practice medicine at this time. My concern for the long term is that he may develop progressively severe problems with alcohol or other substances, and that this may eventually impair his practice of medicine. I would recommend that the doctor have the aforementioned evaluation within the next 60 days.

14. The Board conducted an investigatory interview of respondent on July 11, 2012. He acknowledged that he still consumed alcohol, and had done so as recently as three days earlier.

15. In light of Dr. Greenberg's recommendation for an in-depth evaluation, CEP sent respondent to the Promises Treatment Center in Southern California for an intensive multidisciplinary diagnostic evaluation. The evaluation was conducted on September 10-12, 2012. Respondent gave Promises his arrest history and did not disclose his 2009 DUI arrest on the Bay Bridge. Various psychological tests were administered by psychologist Laura Dorin, Ph.D. An evaluation team took a detailed history from respondent and conducted numerous interviews, including interviews of respondent's friends, colleagues and family members. The evaluation team leader was Gregory Skipper, M.D., who is board certified in addiction medicine. Dr. Skipper interviewed respondent, interviewed all the members of the

¹ The fourth arrest referred to by Dr. Greenberg was a domestic violence arrest in or around 2000. The charges against respondent were dismissed.

evaluation team, reviewed all of the records that were assembled, and prepared a written report dated September 14, 2012.

Dr. Skipper concluded that respondent's likely diagnosis was alcohol dependence, but he could not tell because of respondent's dishonesty and lack of cooperation. According to Dr. Skipper, respondent presented himself as "an innocent man who has been unfortunately and falsely accused." He felt that respondent was "coy and manipulative"; as an example, Dr. Skipper noted that when confronted with the "obvious fact" that three of his four arrests were for substance-related issues, respondent's response "was to accuse the evaluation team of not being objective and jumping to conclusions." Dr. Skipper felt that a polygraph examination of respondent was necessary to complete the examination, but respondent refused to take it. Dr. Skipper recommended that respondent complete a chemical dependence treatment program oriented toward professionals, and that he not be allowed to practice medicine until he had successfully completed treatment.

16. Dr. Greenberg wrote to the Board on September 28, 2012, after reviewing Dr. Skipper's report and discussing the matter with respondent. Dr. Greenberg wrote:

I am writing on behalf of Dr. Vuksinich. I work as an addiction medicine consultant for CEP Med America. In that role I evaluated Dr. Vuksinich and have continued to follow his care on behalf of his employer. My recommendation for Matt is that he enroll in and successfully complete an intensive outpatient substance abuse program, as his diagnosis is alcohol abuse, and then be monitored for a period of 5 years. After Matt left Promises he decided that he had abused alcohol and that he would benefit from treatment and monitoring. I communicated this to Dr. Skipper and he was relieved that Matt had decided to get help despite the fact that he had refused a polygraph. [¶] I believe that in this case, a diagnosis of alcohol abuse without any signs of impairment on the job in 3 decades warrants an intensive outpatient program and 5 years of monitoring.

17. The Board referred respondent to Gregory Sokolov, M.D., a board certified psychiatrist. Dr. Sokolov examined respondent on September 21, 2012. He took a history from respondent, performed a mental status examination and reviewed the records presented to him by the Board. Respondent told Dr. Sokolov that he had "come [to] terms that [he] cannot drink." In his report dated October 22, 2012, Dr. Sokolov informed the Board that respondent is safe to practice, and that he requires psychotherapy and an intensive outpatient treatment program. Then, Dr. Sokolov wrote, respondent would "need to show consistent adherence to recommended outpatient treatment and sustained abstinence from alcohol, as evidenced by negative toxicology screens in random outpatient monitoring."

18. On November 9, 2012, respondent entered into a two-year "Chemical Abuse Monitoring Agreement" with Dr. Sucher, Dr. Greenberg's partner at CPHP; respondent later

extended the agreement. Respondent agreed to abstain from alcohol and all mood altering drugs, and to submit to random biological fluid testing. He was tested periodically through September 2015 and did not return a test that was positive for alcohol or drugs. The testing schedule, however, was not rigorous, with gaps in testing from two weeks to three months.

19. After reviewing the Promises report, Dr. Greenberg reiterated his recommendation for a five-year monitoring program with random testing in a letter to the Attorney General's Office dated January 11, 2013:

I have diagnosed Dr. Vuksinich as having alcohol abuse, and I recommend that he successfully complete an intensive outpatient [program] and that he then participate in an aftercare treatment and monitoring program that utilizes random urine drug and alcohol screening along with random hair or fingernail testing and regular attendance at a professionally facilitated relapse prevention group. In light of the doctor's two DUIs, it would be optimal for him to be in a health care professional's aftercare monitoring program for a period of 5 years rather than the usual 2 year period that is the norm for a single DUI.

20. At Dr. Sucher's suggestion, respondent entered the Merritt Peralta Institute (MPI) "Intensive Outpatient Program for chemical dependency" on October 1, 2013. In a letter dated May 20, 2015, Terry Arnold, the Manager of Assessment & Clinical Services for MPI Treatment Services, writes that respondent successfully completed the program and was discharged on November 7, 2013. Arnold's letter states that MPI Treatment Services follows a 12-Step model of treatment and enforces AA/NA principles of recovery. The letter consists of two paragraphs. It does not contain any information regarding respondent's condition, his treatment or his response to treatment, other than that what is stated above.

Respondent states that the MPI program was not helpful to him with respect to his own alcohol use because he knew at the time that he is not an alcoholic. According to respondent, however, the program gave him "huge respect for people who do have substance abuse problems. I just felt so sorry for them and the steps they had to take – just pity and sorrow."

21. Respondent testified that he participated in psychotherapy with psychologist Michael Edelstein, Ph.D., for six to nine months. According to respondent, Dr. Edelstein told him at their first meeting that he did not meet the criteria for an alcohol problem, so they spent their time on other issues. Respondent states that he stopped seeing Dr. Edelstein when he began MPI. No reports or records from Dr. Edelstein were submitted.

22. At hearing, Dr. Sokolov stated that he continues to believe that respondent should be subject to random biological fluid testing for five years, because five years is the benchmark for a continued prognosis of recovery. Dr. Sokolov is concerned about the lapses in the frequency of testing under the CPHP monitoring agreement. Dr. Sokolov continues to

believe that respondent needs ongoing, regular psychotherapy, a need that was not met by the one-month outpatient treatment program at MPI.

23. Dr. Sucher testified at hearing. He has not written any full psychological evaluations of respondent. Dr. Sucher stated that he oversaw respondent's monitoring agreement with CPHP, and he has met with respondent three or four times. Dr. Sucher testified that respondent never returned a positive test result. He therefore finds no reason to believe that respondent has used alcohol or drugs since September 2012. In his opinion, respondent did not meet the diagnostic criteria for alcohol abuse under the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders, Revised (DSM-IV-TR), and he does not meet the diagnostic criteria for alcohol use disorder under the current version of the DSM (DSM-5). In Dr. Sucher's opinion, no further random testing of respondent is necessary. He believes it would be safe for respondent to resume drinking alcohol, and that doing so would not cause him to develop "additional problems." Dr. Sucher thinks that respondent has demonstrated "good insight" into his alcohol use, that he has recognized the need to remain abstinent and that he has done so.

24. Little weight is given to Dr. Sucher's opinion that respondent can safely resume consumption of alcohol. While he was drinking alcohol, respondent repeatedly engaged in misconduct that endangered the public. Contrary to Dr. Sucher's assertion, the matters set forth in Finding 26 demonstrate that respondent's insight into his alcohol abuse is poor, and the matters set forth in Finding 25 and 27 demonstrate that he does not recognize the need to remain abstinent. The opinions of Dr. Greenberg and Dr. Sokolov are more persuasive, that respondent must abstain from the consumption of alcohol, and that he must demonstrate abstinence for five years through a rigorous random testing program.

25. Respondent does not want to be placed on probation, because he does not want what he describes as the "public stigma" that would attach to that status, and because he believes the time commitments associated with probation would make it impossible for him to continue working. Respondent also testified that he "has problems with the ethics and morality" of being placed on a probation, because he does not have an alcohol-related disorder and it is unethical to require treatment for a condition that does not exist.

26. Respondent denies he was impaired by alcohol on any of the three occasions when he was arrested. He denies that he was weaving across lanes of traffic before he was arrested on the Bay Bridge. (He maintains he was suffering from "photophobia" and was momentarily blinded by the sun when he emerged from the tunnel on Yerba Buena Island.) He denies that he struck the curb or drove erratically before he was arrested in Daly City. He admits his eyes were red and watery, but maintains that his eyes are chronically "bloodshot." And he denies that his inability to pass the field sobriety tests administered to him in Amador County, in Alameda County, or in San Mateo County was due to the influence of alcohol. Applicant maintains that he failed the tests because of poor coordination, a lack of athletic ability, innately poor balance and "lateral gaze nystagmus" that he has had since college.

Respondent's testimony on these points is not credible. It is not probable that all of the law enforcement officers lied about their observations. Nor is it probable that respondent's failure to pass field sobriety tests was due to any reason other than his consumption of alcohol. Respondent has been practicing emergency room medicine for over 30 years, a setting that demands coordination, dexterity, balance and acute vision. It is well-known that alcohol consumption affects one's vision, motor skills, and coordination. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770-771.) Respondent's account of the circumstances of his arrests ignores the obvious and compelling fact that he had been consuming alcohol to a significant extent before each arrest.

Respondent believes that the Promises report was "financially motivated" – in essence, he contends that Promises diagnosed him with an alcohol disorder he does not have so that he would enroll in their residential treatment program. The Promises report is based on the observations of a team of medical professionals, and on objective psychological testing. It is not probable that they conspired to issue a false report. Respondent's attack on the integrity of Dr. Skipper is not shared by Dr. Sucher, who stated that his company relies on Promises to do its intensive substance abuse evaluations and that Dr. Skipper is a qualified and credible examiner. Respondent's testing at Promises, which showed "evasiveness and a strong desire to cast himself in a positive light," is consistent with his presentation in this proceeding. Respondent's assertion that the Promises report is biased and false is not persuasive.

Respondent's testimony demonstrates that he lacks insight into his alcohol abuse, and that his testimony on that subject is not credible.

27. Respondent states he has not consumed alcohol since September 2012. His longtime friend, Thomas Donnelly, and his adult son, Michael Vuksinich, testified that they have not seen respondent drink alcohol since that date.

Asked why he decided to abstain from alcohol in September 2012, respondent testified that he felt at some point he was going to be ordered to abstain from alcohol and "since it was not a big deal to [him], [he] thought, 'Why not now?'" It appears that respondent was anticipating what his employer, CEP, was going to require of him. Shortly thereafter, CEP required respondent to enter the CPHP monitoring program because, it was, in respondent's words, "getting antsy" about the Board's investigation. Respondent was required to abstain from alcohol as a condition of entering the CPHP monitoring program. As to his own views on abstaining from alcohol, respondent testified that he does not intend to drink and drive, and he will continue to abstain before treating patients, but he "cannot say [he] would never ever drink."

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. The board may take disciplinary action against a physician and surgeon who engages in unprofessional conduct. (Bus. & Prof. Code, § 2234, subd. (a).) Business and Professions Code section 2239, subdivision (a), provides that “more than one misdemeanor . . . involving the use, consumption or self-administration of any of the substances referred to in this section . . . constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct.” Alcohol is one of the substances referred to in section 2239, subdivision (a).

3. Respondent has been convicted of two misdemeanors involving the use and consumption of alcohol. He argues, however, that allegations of unprofessional conduct based on his February 2006 wet reckless conviction are barred by the statute of limitations.

Business and Professions Code section 2230.5, subdivision (a), states that, with exceptions not pertinent here, “any accusation filed against a licensee . . . shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.”

In this case, the accusation was filed on December 18, 2012, which is within the seven-year period following respondent’s wet reckless conviction on February 14, 2006. Respondent argues that the Board “must” have been notified of his 2006 conviction by the district attorney and the clerk of the court; no evidence was presented, however, to show that the board was in fact notified and, if so, when it was notified. Respondent argues that the limitations period accrued with his arrest on July 23, 2005, which occurred more than seven years before the accusation was filed. In this case, however, complainant alleges cause for discipline based on “more than one misdemeanor” – that is, on respondent’s convictions – not on the fact of his use of alcohol on the day he was arrested.

The accusation was filed within 10 months of respondent’s second alcohol-related conviction on February 15, 2012.

The allegations in the accusation concerning respondent’s 2006 wet reckless conviction are not barred by the statute of limitations.

4. Respondent argues that his 2009 DUI arrest is barred by the statute of limitations and that it does not support disciplinary action. That arrest, however, is not alleged as cause for discipline.

5. Citing *Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, respondent argues that to satisfy the requirements of due process, he cannot be disciplined unless complainant proves that he poses a threat to public safety.

This contention was rejected in *Griffiths v. Superior Court*, *supra*, 96 Cal.App.4th 757, and in *Watson*. In *Griffiths*, the court held that section 2239, subdivision (a), establishes

a sufficient nexus between alcohol-related misdemeanor convictions and a physician's competence or fitness to practice medicine:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician's fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [¶] Driving while under the influence of alcohol also shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society. . . . Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the public, tends to undermine public confidence in and respect for the medical profession.

(96 Cal.App.4th at pp. 770-771.) In *Watson*, the court agreed with the reasoning of *Griffiths* that section 2239, subdivision (a), "satisfies the constitutional requirement that a nexus exist between the disciplined conduct and the physician's fitness and competence to practice medicine without any additional showing that the convictions or the alcohol consumption impaired [the physician's] practice of medicine."

To establish cause for discipline under section 2239, subdivision (a), complainant is not required to prove that respondent poses a threat to public safety.

6. Respondent has suffered two convictions involving the use, consumption or self-administration of alcohol. (Findings 7 & 10.) Cause for discipline exists pursuant to Business and Professions Code section 2239, subdivision (a), as that section interrelates with Business and Professions Code section 2234.

7. Cause for discipline having been established, the issue is the extent of discipline that should be imposed. To assist in making this determination, the Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and "Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees" (Cal. Code Regs., tit. 16, § 1361.) Under the Disciplinary Guidelines, the minimum recommended discipline for a violation of section 2239 is five years' probation. The Uniform Standards state probationary terms and conditions that "shall be used without deviation in the case of a substance-abusing licensee." (Cal. Code Regs., tit. 16, § 1361, subd. (b).)

8. Respondent asserts that the accusation against him should be dismissed. He maintains that he does not meet the criteria for an alcohol abuse disorder under the DSM and that, over the past three years, he has done everything that would be required of him by the Board's probation program. Placing him on probation, respondent contends, would be merely punitive.

9. Respondent's argument is not persuasive. The steps he has taken to date are not equivalent to the Board's probation program. The random testing program by CPHP was not sufficiently rigorous, with gaps of time of as much as three months when respondent was not tested. There are no substantive reports from the MPI program, and no reports of any kind from respondent's psychotherapist, concerning his treatment or his response to treatment. Respondent's response to these programs has not been reassuring, as his insight into his alcohol-related misconduct remains poor. Respondent's own assurances that he is rehabilitated cannot be taken at face value, because his credibility on the issue of his substance abuse is also poor.

10. Whatever respondent's psychological diagnosis may be, the evidence establishes he cannot practice with safety to the public unless he abstains from the consumption of alcohol. It is acknowledged that respondent's use of alcohol has not yet resulted in an injury to a patient, but the Board does not have to wait for that to happen to take disciplinary action that is necessary to protect the public. Respondent does not believe he has an alcohol-related condition, he is not committed to abstaining from the consumption of alcohol, and he has not demonstrated convincingly that he will abstain from the consumption of alcohol. The evidence does not justify a departure from the Board's disciplinary guidelines.

Respondent is a substance-abusing licensee. Protection of the public requires that respondent be placed on probation for five years subject to conditions required by the Board's Uniform Standards. Because of his criminal convictions, respondent will be required to enroll in and complete a professionalism course. The Board's standard conditions of probation will also be imposed.

ORDER

Physician's and Surgeon's Certificate Number G43289, issued to respondent Matthew Joseph Vuksinich, M.D., is revoked. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions.

1. Clinical Diagnostic Evaluations and Reports

Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and

surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether respondent has a substance abuse problem, whether respondent is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to respondent's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that respondent is a threat to himself or others, the evaluator shall notify the Board within twenty-four (24) hours of such a determination.

In formulating his or her opinion as to whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: respondent's license type; respondent's history; respondent's documented length of sobriety (i.e., length of time that has elapsed since respondent's last substance use); respondent's scope and pattern of substance abuse; respondent's treatment history, medical history and current medical condition; the nature, duration and severity of respondent's substance abuse problem or problems; and whether respondent is a threat to himself or the public. For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five (5) business days of receipt to determine whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until he has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two (2) times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified by the Board or its designee.

2. Notice of Employer or Supervisor Information

Within seven (7) days of the effective date of this Decision, respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, respondent's worksite monitor, and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when respondent has medical staff privileges.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by respondent.

During the first year of probation, respondent shall be subject to 52 to 104 random tests.

During the second year of probation and for the duration of the probationary term, up to five (5) years, respondent shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five (5) consecutive years of probation, may testing be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven (7) business days of receipt of the specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.

- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the respondent to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.
- (m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If a biological fluid test result indicates respondent has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one (1) business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the

licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms “biological fluid testing” and “testing” mean the acquisition and chemical analysis of a respondent’s urine, blood, breath, or hair.

For purposes of this condition, the term “prohibited substance” means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, alcohol, or any other substance respondent has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, respondent has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance respondent’s rehabilitation.

4. Substance Abuse Support Group Meetings

Within thirty (30) days of the effective date of this Decision, respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three (3) years’ experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with respondent within the last five (5) years. Respondent’s previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing respondent’s name, the group name, the date and location of the meeting, respondent’s attendance, and respondent’s level of participation and progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within twenty-four (24) hours of the unexcused absence.

5. Worksite Monitor for Substance-Abusing Licensee

Within thirty (30) calendar days of the effective date of this Decision, respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding respondent's behavior, if requested by the Board or its designee; and review respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and respondent's employer or supervisor within one (1) business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one (1) hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff

interviewed, if applicable; (7) a report of respondent's work attendance; (8) any change in respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, respondent shall, within five (5) calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within fifteen (15) calendar days. If respondent fails to obtain approval of a replacement monitor within sixty (60) calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

6. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.
- (2) Increase the frequency of biological fluid testing.
- (3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

- B. If respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:
- (1) Issue a cease-practice order;
 - (2) Order practice limitations;
 - (3) Order or increase supervision of respondent;
 - (4) Order increased documentation;
 - (5) Issue a citation and fine, or a warning letter;
 - (6) Order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense;
 - (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)
- C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Professionalism Program (Ethics Course)

Within 60 calendar days of the effective date of this Decision, respondent shall enroll in a professionalism program, that meets the requirements of title 16, California Code of Regulations, section 1358. Respondent shall participate in and successfully complete that program. Respondent shall provide any information and documents that the program may deem pertinent. Respondent shall successfully complete the classroom component of the program not later than six (6) months after respondent's initial enrollment, and the longitudinal component of the program not later than the time specified by the program, but no later than one (1) year after attending the classroom component. The professionalism program shall be at respondent's expense

and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A professionalism program taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the program would have been approved by the Board or its designee had the program been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the program or not later than 15 calendar days after the effective date of the Decision, whichever is later.

8. Notification

Within seven (7) days of the effective date of this Decision, respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

10. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

11. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes: Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or a patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal: Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

13. Interview with the Board or its Designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

14. Non-practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not

be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws, and General Probation Requirements.

15. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

16. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

17. License Surrender

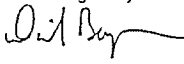
Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender his license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice

medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: January 15, 2016

DocuSigned by:

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DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO DECEMBER 12, 2012
BY: JYELHATK ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 12-2012-221354

12 **MATTHEW J. VUKSINICH, JR., M.D.**

A C C U S A T I O N

13 1336 Regent Street
14 Alameda, CA 94501

15 Physician's and Surgeon's Certificate
No. G43289

16 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Linda K. Whitney (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs.

23 2. On or about September 8, 1980, the Medical Board of California issued
24 Physician's and Surgeon's Certificate Number G43289 to Matthew J. Vuksinich, Jr., M.D.
25 (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times
26 relevant to the charges brought herein and will expire on July 31, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division¹ deems proper.

5. Section 2234 of the Code states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts. . .

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate. . . ."

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¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus.& Prof. Code, sections 2000 et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and the "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Medical Board.

1 6. Section 2236 of the Code states, in pertinent part:

2 “(a) The conviction of any offense substantially related to the qualifications, functions, or
3 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
4 chapter. The records of conviction shall be conclusive evidence only of the fact that the
5 conviction occurred. . . .

6 “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to
7 be a conviction within the meaning of this section and Section 2236.1. The record of conviction
8 shall be conclusive evidence of the fact that the conviction occurred.”

9 7. Section 2239 of the Code states:

10 “(a) The use or prescribing for or administering to himself or herself, of any controlled
11 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
12 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
13 any other person or to the public, or to the extent that such use impairs the ability of the licensee
14 to practice medicine safely or more than one misdemeanor or any felony involving the use,
15 consumption, or self-administration of any of the substances referred to in this section, or any
16 combination thereof, constitutes unprofessional conduct. The record of the conviction is
17 conclusive evidence of such unprofessional conduct.

18 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
19 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
20 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
21 may order the denial of the license when the time for appeal has elapsed or the judgment of
22 conviction has been affirmed on appeal or when an order granting probation is made suspending
23 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
24 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
25 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
26 information, or indictment.”

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct: Misdemeanor Convictions for Driving Under the Influence of Alcohol)

3 8. Respondent is subject to disciplinary action for unprofessional conduct under section
4 2234 and/or sections 2236(a) and/or 2239 for more than one misdemeanor conviction involving
5 the use, consumption, or self-administration of alcohol. The circumstances of which are
6 described herein below.

7 2006 DUI Conviction in Amador County

8 9. On or about July 23, 2005, Respondent was arrested in Jackson, Amador County, for
9 driving under the influence. Said arrest resulted in Amador County Superior Court Complaint
10 No. 05CR8583 being filed against Respondent charging two misdemeanor counts for violations
11 of Vehicle Code sections 23103.5 and of 23903(a).

12 10. On or about February 14, 2006, Respondent pleaded guilty to Count One, a
13 misdemeanor "wet reckless" for driving under the influence, a violation of Vehicle Code section
14 23103(a).

15 11. On or about February 27, 2006, the Court accepted Respondent's guilty plea and he
16 was convicted and sentenced as follows: a 36-months probation, 10 days jail, plus payment of
17 fines, fees and restitution, and a work program in lieu of educational component of first offender
18 DUI counseling.

19 2012 DUI Conviction in San Mateo County

20 12. On or about November 19, 2011, Respondent was arrested in Daly City, San Mateo
21 County, for driving under the influence after field sobriety tests and a preliminary alcohol
22 screening test were administered.

23 13. On or about December 27, 2011, a criminal complaint was filed against Respondent
24 in the case of *People of the State of California v. Matthew Joseph Vuksinich*, San Mateo County
25 Superior Court Case No. NM407470. The complaint alleged two misdemeanor counts related to
26 Respondent's November arrest for driving under the influence, violations of Vehicle Code
27 sections 23152(a) and 23152(b).
28

14. On or about February 15, 2012, Respondent pleaded “no contest” to Count Two, a misdemeanor violation of Vehicle Code section 23152(b) (driving under the influence of alcohol with a blood alcohol level over 0.8%). Count One was dismissed and the Court suspended the imposition of sentence for Count Two and ordered a three-year Court probation with: enrollment and completion of an 18-month multiple offender alcohol program; 96 hours jail; the payment of fines, fees and costs; and the standard conditions of a DUI probation, including a restriction or suspension of driving privileges concurrent with the DMV.

15. On June 2, 2012, as part of Respondent's criminal sentence and probation, the Department of Motor Vehicles (DMV) issued a related order for an Ignition Interlock Device Restriction that became effective May 8, 2012 to December 19, 2013.

Additional Facts In Aggravation

16. On July 11, 2012, Respondent was interviewed by a Medical Board investigator and a licensed physician who is a Board District Medical Consultant. At his interview with the Medical Board on July 11, 2012, Respondent voluntarily gave a urine sample that tested positive for Ethyl Glucuronide, which indicates that Respondent consumed alcohol within 80 hours of giving the sample. During the interview, Respondent admitted to drinking and said that his last drink had been on Sunday, July 8, 2012.

17. On or about June 13, 2009, Respondent was arrested in San Francisco and a complaint was filed in San Francisco County Superior Court Case no. 2423122 charging him with driving under the influence, misdemeanor violations of Vehicle Code sections 23152(a) and 23152(b). Said charges were dismissed on or about June 29, 2009.

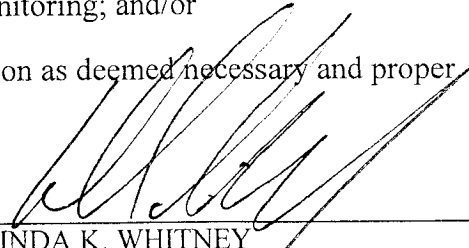
PRA YER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G43289,
issued to Matthew J. Vuksinich, Jr., M.D.;

- 1 2. Revoking, suspending or denying approval of Matthew J. Vuksinich, Jr., M.D.'s
2 authority to supervise physician assistants pursuant to section 3527 of the Code;
3 3. Ordering Matthew J. Vuksinich, Jr., M.D., if placed on probation, to pay the Medical
4 Board of California the costs of probation monitoring; and/or
5 4. Taking such other and further action as deemed necessary and proper

6
7 DATED: December 18, 2012


LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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